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No. 91-1586

IN THE

Supreme Court of the United States

October Term, 1991

SUPER VALU STORES, INC.,
Petitioner,

v.

IOWA DEPARTMENT OF REVENUE AND FINANCE,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF IOWA

PETITIONER'S SUPPLEMENTAL BRIEF

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Petition for a Writ of Certiorari to the Supreme Court of Iowa

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PETITIONER'S SUPPLEMENTAL BRIEF

This brief is submitted pursuant to Rule 15.7 to discuss the application to this case of the Court's decision in *Allied-Signal, Inc. v. Director, Division of Taxation* (No. 91-615), filed on June 15, 1992.

In *Allied-Signal,* the Court reaffirmed that the unitary business standard applies in determining whether the

income of a nondomiciliary corporation is apportionable. The Court repeatedly emphasized that the "relevant unitary business inquiry" in applying the standard to income derived from an intangible asset is whether the asset serves an "investment function" or an "operational function," citing *Container Corp. of America v. Franchise Tax Board*, 463 U.S. 159, 180 n. 19 (1983). *Allied-Signal*, slip op. at 13-14, 16, 17.

In *Allied-Signal*, Bendix and ASARCO concededly lacked a unitary business relationship, and the Court rejected New Jersey's contention that Bendix' gain on its ASARCO investment was nevertheless apportionable because the purchase and sale of the ASARCO stock played an integral role in Bendix' business operations. The question in the present case differs from that in *Allied-Signal* because Iowa has predicated the taxability of Super Valu's gain on its County Seat investment solely upon the purported existence of a unitary business relationship between Super Valu and County Seat, despite the fact that Super Valu and County Seat were engaged in entirely diverse lines of business.

Although it was clear in *Allied-Signal* that a unitary business relationship did not exist between Bendix and ASARCO, the Court's discussion of the unitary business standard in that case illuminates the error of the Iowa Supreme Court in formulating the standard in this case. The Iowa court entirely ignored the distinction between "investment" and "operational" functions set forth in *Container*, 463 U.S. at 180 n. 19, and characterized in *Allied-Signal* (slip op. at 13-14) as "the relevant unitary business inquiry." It failed to note the distinctions drawn in *Container* (463 U.S. at 178, 180 n. 19) and emphasized in *Allied-Signal*

(slip op. at 18) between capital transactions that serve an "investment" function and an "operational" function, between management roles that are or are not grounded in "operational expertise" and "operational strategy," and between investments in subsidiaries that are or are not engaged in the "same line of business" as the parent. The Iowa court's failure to address these distinctions, discussed in the Petition for a Writ of Certiorari (at 9, 22-25) and in the Petitioner's Reply Brief (at 8-10), effectively precluded the court from considering the role of diversity in applying the unitary business standard. *Allied-Signal* removes any doubt that this failure seriously taints the Iowa decision and that the decision conflicts with the applicable decisions of this Court.

In the wake of *Allied-Signal,* the application of the unitary business standard to diverse businesses--as in the case of Super Valu and County Seat--is likely to remain an important issue until the matter is decided by this Court. The emphasis upon the "operational function" test in *Allied-Signal* means that nondomiciliary taxpayers will doubtless continue to assert that diverse businesses are non-unitary. Conversely, the states may be expected to continue asserting the position that Iowa has taken in this case until the matter is definitively resolved.

Accordingly, the petition for a writ of certiorari should be granted, and the Court should either give the case plenary consideration or vacate the judgment below and remand the case to the Supreme Court of Iowa with

instructions to reconsider its decision in light of *Allied-Signal*.

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